IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

TUESDAY, THE TWENTY FIRST DAY OF JUNE, TWO THOUSAND AND FIVE

PRESENT

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No. 20071 OF 2004

BETWEEN:

V.Rajeshwar Rao S/o Late Venakta Ramaiah, aged about 65 years, President, M/s. Bharani Mutually Aided Cooperative Housing society Ltd., (Registered No.AMC/PR/DCO/43/99) R/o.12-2-725/3, P&T Colony, Rethi Bowli, Hyderabad.

…Petitioner

And

1. Government of Andhra Pradesh, rep.by its Secretary, Agriculture and Cooperative Department, Secretariat, Hyderabad.

2. Commissioner for Cooperation and Registrar of Co-operative Societies, Andhra Pradesh, Hyderabad.

3. Joint Registrar/District Cooperative Officer, Ranga Reddy District.

4. Deputy Registrar/Divisional Cooperative Officer, Hyderabad (West) Division, Ranga Reddy District.

5. Satthi Satyanrayana Reddy, S/o Thatha Reddy, aged 62 years, R/o H.No.15, Sri Lalitha Nagar Colony, Jillelaguda village, Hyerabad.

   R-5 is impleaded as per Court order dated 8-11-2004 in WPMP No.26928 of 2004.

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ declaring that the action of the respondents in purporting to conduct an inquiry into the affairs of the M/s.Bharani Mutually Aided Cooperative Housing Society Ltd., without complying with the requirements of Section 29 of the Mutually Aided

Cooperative Societies Act, 1995, is arbitrary and without jurisdiction and direct the respondents to forbear from conducting any inquiry under section 29(2) of the Act into the affairs of M/s. The Bharani Mutually Aided Cooperative Society Ltd., without following the procedure of law.

Counsel for the Petitioner: Mr.Vedula Venkataramana.

Counsel for the Respondents 1 to 4: G.P., for Cooperation.

Counsel for the Respondent No.5 : Mr. G.Krishna Murthy.

The Court made the following :

ORDER:

Earlier the writ petition was disposed of by order dated 18-04-2005, but the said order was set aside pursuant to the orders made in W.P.M.P.No.13541 of 2005 filed by the 5th respondent on the ground that without hearing his counsel, the writ petition was disposed of.

Heard all the learned counsel appearing for the respective parties.

It is the case of the petitioner that he is the president of M/s. Bharani Mutually Aided Co-operative Housing Society Limited, registered under the provisions of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (for short “the Act 1995”). Originally, there was a society by name Bharani Co-operative Housing Society Limited, which was registered under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964 (for short “the Act 1964”). The petitioner was the president of the said society from August 1997 and when he was president of the said society, pursuant to the General Body resolution, the said society was converted as Mutually Aided Co-operative Housing Society. It is stated that after registration of the Mutually Aided Co-operative Housing Society, the registration of the erstwhile society registered under the Act 1964 was cancelled after issuance of the certificate under the Act 1995 as contemplated under Section 5 of the Act 1995. It is further stated that the provisions of the Act 1995 do not give wide jurisdiction to the official respondents to interfere with the affairs of the Mutually Aided Co-operative Society. In

other words, the authority of the respondents to control a mutually aided co-operative society is far less when compared to the societies registered under the Act 1964.

It is further stated that the 5th respondent who was one of the members of the society registered under the Act 1964 withdrew his membership and took refund of the share capital and submitted a representation dated 31-8-1999 making certain allegations against the petitioner and invited action from the Commissioner for Co-operation and Registrar of Co-operative Societies. On the said representation, the second respondent issued proceedings dated 17-09-2002 directing conduct of an enquiry under Section 29(2) of the Act 1995. Section 29(2) of the Act 1995 enables an enquiry into the affairs of a mutually aided co-operative society subject to fulfillment of certain requirements contained in the said provisions of law and as the said representation was not in fulfillment of the said requirements giving rise to the legal basis for directing enquiry, the petitioner approached the Government (first respondent) and the Government initially stayed the proceedings of the second respondent on 2-11-2002 and passed final orders on 8-3-2004 annulling the proceedings of the second respondent dated 17-09-2002 on the ground that the said proceedings are not inconformity with the provisions of the Act 1995. Thus, the representation/complaint of the 5th respondent was rejected as the same cannot constitute a legal foundation for directing conduct of enquiry under Section 29(2) of the Act 1995.

It is further stated that the 5th respondent submitted similar representation 3-9-2004 and thereafter, the machinery of the second respondent was set in motion and the file of the petitioner was called for by the second respondent from the office of the 3rd respondent. It is stated that the said representation was the self same and similar representation which was negatived earlier by the Government and therefore, the respondents ought not to have entertained the said representation of the 5th respondent, but contrary to the provisions of the Act 1995, the 4th respondent i.e., the Deputy Registrar/Divisional

Co-operative Officer, Hyderabad (West) Division, Ranga Reddy District issued summons under Section 55 of the Act 1964 vide his proceedings in Rc.No.2044/2004.P, dated 5-10-2004 for production of the admission register/membership register prior to conversion and threatened that disobedience of the said summons, necessary action will be initiated. Thus, it is stated that the action of the respondents in reopening the same issue which was closed by the proceedings of the first respondent dated 8-3-2004 is arbitrary and illegal and the summons issued under Section 55 of the Act 1964 are illegal and without jurisdiction. Once the registration certificate of the society registered under the Act 1964 is cancelled after receiving the registration certificate under the provisions of the Act 1995, the registration certificate of earlier society was cancelled and therefore, respondents 1 to 4 cannot take any action under the provisions of the Act 1964. Accordingly, it is stated that the impugned summons under Section 55 of the Act 1964 dated 5-10-2004 are illegal and arbitrary and he requested to set aside the same.

The learned counsel appearing for the 5th respondent submits that the 5th respondent was member of Bharani Co-operative Housing Society Limited which was registered under the Act 1964 and the main objects of the said society was to purchase land either from the private persons or from the Government and its agencies like HUDA etc., and divide the same into plots after duly obtaining necessary permission from the concerned authorities and allot the same to the respective members. The said society is governed by duly constituted managing committee and the said society was duly elected by the members of the society consisting of 75 members. In the year 1982, the society entered into an agreement to purchase Ac.9-16 guntas situated at Gudimalkapur of Hyderabad in respect of the urban property, which is a surplus land after issuing proceedings by the Special Officer dated 9-11-1982 and the request of the owners to exempt it was also rejected by the Government by Memo dated 24-12-1983 and pursuant to the guidelines issued by the Government in G.O.Ms.No.964, dated 27-6-1983, the said property

was handed over to HUDA and the HUDA delivered the excess surplus land to the society for the purpose of allotment of plots to the members of the society. It is further stated that the owners of the land filed W.P.No.14527 of 1984 questioning the proceedings of the Special Officer, which was disposed of with a direction to conduct fresh enquiry. It is further stated that the 5th respondent was elected as president of the said society and also after completion of the term of the 5th respondent, the petitioner became the president. After assuming charge as president of the society, the petitioner entered into compromise with the owners and obtained sale deeds in favour of the society represented by his son as Secretary with respect to their retainable extent of land and the Secretary also filed a suit O.S.No.1181 of 1993 for the specific performance of agreement of sale dated 22-1-1982 against the owners for execution of sale deeds in favour of the society with respect to the lands covered under the agreement of sale and the said suit is still pending. It is further stated that the 5th respondent made a complaint against the petitioner in 1998 to take necessary action under the provisions of the Act 1964 and pursuant to the said complaint, a notice dated 24-8-1999 was issued under Section 34(1) of Andhra Pradesh Co-operative Societies Act, 1964 as to why the president and Managing Committee of Bharani Co-operative Housing Society Limited should not be superceded and asked him to file his explanation. At that juncture, the said society was converted and registered under the provisions of Mutually Aided Co-operative Societies Act 1995 vide registration No.TBC 264 dated 25-8-1999 and after registration of the present society under the Mutually Aided Co-operative Societies Act, the registration of the society registered under the Act 1964 was cancelled and ceased with effect from 5-8-1999 and the legal status of the society is changed. Questioning the conversion of the said society, W.P.No.21505 of 1999 was filed and the same is pending on the file of this Court. It is further stated that the second respondent issued proceedings dated 17-9-2002 under Section 29(2) of the Act 1995 appointing the District Co-operative Officer, Ranga Reddy to

conduct enquiry with respect to the constitution, working, financial and other aspects of the mismanagement and misappropriation of funds as alleged in the representation of the 5th respondent dated 31-8-1999 and proceedings of the second respondent were questioned by the petitioner in W.P.No.20686 of 2002 and also simultaneously approached the Government and the Government vide its Memo dated 2-11-2002 initially stayed and thereafter annulled the proceedings and the said order of the second respondent is not inconformity with the provisions of the Act 1995. It is further stated that one M.Bhujanga Reddy Ex-president also filed W.P.No.3792 of 2004 questioning the memo of the Government dated 8-3-2004 in annulling the proceedings of the second respondent dated 17-9-2002 and the said writ petition is still pending. Thus, it is submitted that issuance of summons under Section 55 of the Andhra Pradesh Co-operative Societies Act 1964 to the petitioner who was Ex-president and requested him to furnish the admission register register/membership register of the society prior to conversion of Bharani Co-operative Housing Society Limited into Bharani Mutually Aided Co-operative Society Limited for the purpose of enquiry as per the orders of the Registrar is legal and valid and the petitioner is not entitled to question the said impugned proceedings dated 5-10-2004.

It is stated that if the enquiry is not conducted pursuant to the summons issued under Section 55 of the Act 1964, the erstwhile members will suffer serious loss and therefore, the writ petition is liable to be dismissed.

I have heard the rival contentions. The pendency of other writ petitions is nothing to do with the impugned notice issued by the second respondent. The impugned notice issued by the second respondent reads as follows:-

"SUMMONS U/S 55 OF THE APCS ACT OF DEPUTY REGISTRAR/DIIVISIONAL COOP OFFICER, HYDERABAD (WEST) DIVISION,R.R.DISTRICT.

Present:- Smt.D.Rama Devi (FAC)

Deputy Registrar/Divisional Coop Officer

Hyderabad (West) Division, R.R.District.

Rc.No.2044/2004.P. Date: 5-10-2004

Sub:- Housing – Bharani Coop Housing Society Ltd – Admission Register/Membership Register – Called for – Summons Issued – Reg.

Ref:- The Commissioner for Cooperation and Registrar of Cooperative Societies A.P., Hyderabad Memo Rc.No.23661/2001/MACS/Hsg, Dt.23-9-04 and Dt.29-9-04.

****

The Ex-President of Bharani Coop Housing Society ltd registered under APCs Act with TBC-264 is requested to furnish the Admission Register/Membership Register of the society prior to conversion as called by the Commissioner for Cooperation and Registrar of Coop Societies A.P., Hyderabad to this Office immediately. Disobedience of this summons necessary action shall be initiated as per the provisions of the law.

Sd/-

(D.Rama Devi)

Deputy Registrar/

Divisional Co-op Officer,

Hyderabad (West) Division

R.R.Dist."

Admittedly, the registration certificate of Bharani Co-operative Housing Society Limited was cancelled pursuant to the registration of the Bharani Mutually Aided Co-operative Housing Society Limited. Under Section 5 of the Act 1995, once the society is registered under the Act 1995, the society registered under the Act 1964 shall stand cancelled. Therefore, it cannot be said that the society registered under the Act 1964 is existing. Admittedly, the validity, constitution

and registration of Bharani Mutually Aided Co-operative Housing Society registered under the Act 1995 is the subject matter of the other writ petitions. Unless the said writ petitions are allowed, it cannot be said that the official respondents have got any power to take any action under any of the provisions of the Act 1964 as the society registered under the Act 1964 is not in existence as its registration was already cancelled. Therefore, I am of the opinion that the notice issued under Section 55 of the Andhra Pradesh Co-operative Societies Act 1964 to the petitioner requiring him to furnish the admission register/registration register of the society prior to the conversion as called by the Commissioner for Co-operation and Registrar of Co-operative Societies is illegal and without jurisdiction. If the respondents wish to take any action, it is open for them to take appropriate action only under the relevant provisions of the Act 1995.

It is stated that the 5th respondent has failed in his attempts to take appropriate action under Section 29(2) of the Act 1995 as the Government rightly annulled the proceedings initiated by the Registrar of Co-operative Societies, dated 17-9-2002 by Memo dated 8-3-2004, he cannot make an attempt to initiate action under Section 55 of the Act 1964 as the society registered under the Act 1964 is not in existence and its registration was already cancelled. It is further stated that the 5th respondent was not the member of the Mutually Aided Co-operative Housing Society and therefore, the 5th respondent is not entitled to initiate any action against the society registered under the Act 1995.

For the aforesaid reasons, the writ petition is allowed. The summons issued under Section 55 of the Andhra Pradesh Co-operative Societies Act by the 4th respondent in Rc.No.2044/2004.P dated 5-10-2004 are set aside. No order as to costs.

_____

V.ESWARAIAH,J

Date: 21-06-2005.

Shr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, Acting Chief Justice on this the Twenty First day of June, Two Thousand and Five.

Asst.Registrar.

To

1. The Secretary, Government of Andhra Pradesh, Agriculture and Cooperative Department, Secretariat, Hyderabad.
2. The Commissioner for Cooperation and Registrar of Co-operative Societies, Andhra Pradesh, Hyderabad.
3. The Joint Registrar/District Cooperative Officer, Ranga Reddy District.
4. The Deputy Registrar/Divisional Cooperative Officer, Hyderabad (West) Division, Ranga Reddy District.
5. Two CCs to GP for Cooperatiopn, High Court Buildings, Hyderabad (OUT)
6. Two CD Copies.
7. One CC to Mr.V.Venkataramana, Advocate (OPUC)